



21 FEB 2006

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In re Application of
LIU

DECISION

Application No.: 10/523,439
PCT No.: PCT/FR03/02133
Int. Filing Date: 09 July 2003
Priority Date: 29 July 2002
Attorney's Docket No.: 17170/008001
For: ELECTROMAGNETIC RETARDER FOR A
VEHICLE PROVIDED WITH A SPEED
INCREASING UNIT

This decision is in response to applicant's "REQUEST TO AFFORD FILING DATE UNDER 37 C.F.R. § 1.10" filed on 06 September 2005, which has been treated as a petition under 37 CFR 1.10(d).

BACKGROUND

On 09 July 2003, applicants filed international application PCT/FR03/02133, which designated the U.S. and claimed a priority date of 29 July 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 26 February 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 31 January 2005 (29 January 2005 being a Saturday).

On 29 January 2005, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 August 2005, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for filing the oath or declaration later than thirty months from the earliest priority date were required. This NOTIFICATION set a two month extendable period for reply.

On 06 September 2005, applicant submitted a response which included, *inter alia*, a declaration of the inventor and the surcharge under 37 CFR 1.492(e).

On 06 September 2005, applicant also submitted the instant REQUEST TO AFFORD FILING DATE UNDER 37 C.F.R. § 1.10", which has been treated as a petition under 37 CFR 1.10(d).

DISCUSSION

A review of the application papers located in the application file reveals that they were stamped with a receipt date of 29 January 2005. The "Express Mail" label number EV535680024US is shown on "Certificate of Express Mailing Under 37 CFR 1.10" which itemizes the items being filed. The copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label accompanying the petition contains the same "Express Mail" label number.

The copy of the Customer Copy of Express Mail mailing label #EV535680024US shows a "Date In" of "12905".

37 CFR 1.10(d) states:

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

The petition provides a satisfactory showing under 37 CFR 1.10(d)(1) and (2).

As to item (3), applicant has not provided a satisfactory showing. Applicant has provided only the copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label #EV535680024US which includes a date-in of 29 January 2005. The petition states that applicant filed the application with the USPS by Express Mail on 28 January 2005 and that "the clerk at the U.S. Post Office errantly hand wrote the date on the receipt as January 29, 2005." However, no evidence from the USPS has been provided nor has any evidence that came into being after deposit and within one business day of the deposit of the correspondence with the

USPS been provided, as required by 37 CFR 1.10(d)(3). Accordingly, it is inappropriate, on the present record, to accord the international application an international filing date of 28 January 2005.


The petition urges that the Certificate of Express Mailing, Fee Transmittal, Application Cover Sheet, and Credit Card Payment Form are all date January 28, 2005. However, these documents only show an intent to file on that date; they are not evidence that the papers were deposited on that date.

CONCLUSION

For the reasons set forth above, applicant's petition under 37 CFR 1.10(d) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)." No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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